

VERMONT ENVIRONMENTAL BOARD  
10 V.S.A. Chapter 151

Re: New England Kurn Hattin Homes  
Application #2W0082-4-EB

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This decision pertains to an appeal of a permit issued for the demolition of a building listed on the State Register of Historic Places (the State Register). As is explained below, the Environmental Board approves a stipulation among the parties and concludes that, with conditions, the demolition constitutes an adverse effect on an historic site which is not undue.

I. SUMMARY OF PROCEEDINGS

A. District #2 Commission

New England Kurn Hattin Homes (the Applicant) runs a school located on an approximately 288-acre tract of land off Kurn Hattin Road in Westminster. Prior permits issued to the Applicant include, but are not limited to: Land Use Permit #2W0082 (Aug. 17, 1972), for eight cottages each to house 10 to 12 students; Land Use Permit Amendment #2W0082-2 (June 8, 1988), site and foundation approval for an academic building, and other improvements; and Land Use Permit Amendment #2W0082-3 (June 30, 1993), for three student residences and other improvements.

On July 7, 1994, the District #2 Commission issued Land Use Permit Amendment #2W0082-4 (the Permit Amendment), authorizing the Applicant to remove a two-story brick structure known as the Manual Arts Building (the Building). Among other items, the findings supporting the Permit Amendment state that jurisdiction exists over removal of the Building because such constitutes a material change to a permitted project. No party appealed the District Commission's jurisdictional finding.

On July 27, 1994, the State of Vermont Division for Historic Preservation (the Division) filed a motion to alter. On September 14, the District Commission issued a memorandum of decision denying the motion. In the decision, the District Commission states:

We find the site is listed on the Vermont register of historic places, but it was listed based on incorrect information. ...[W]e are not convinced that this building would have been placed on the register with accurate information. Therefore, we decline to further pursue the analysis and find this building is not historic.

On October 14, 1994, the Division filed a motion to alter the District Commission's September 14 decision. The District Commission denied this motion by decision dated November 29.

B. Environmental Board

On December 28, 1994, the Division filed an appeal with the Board. On February 6, 1995, Board Chair John Ewing convened a prehearing conference in Montpelier. Despite notice to the Applicant, only the Division attended the conference.

On February 7, 1995, the Chair issued a memorandum to parties stating what had occurred on the February 6 conference. The Chair's February 7 memorandum is incorporated by reference.

On February 17, 1995, the Applicant filed a letter stating that it has demolished the Building and that it did not intend to have any representative present during the appeal process.

On February 23, 1995, the Chair issued a preliminary ruling pursuant to Environmental Board Rule (EBR) 16(B) that the appeal is now moot.

On March 2, 1995, the Division filed a letter in objection to the preliminary ruling. During March and April, written filings, oral argument, and deliberations occurred concerning whether this matter is moot. The Applicant was notified of the proceedings and did not participate in them.

On May 3, 1995, the Board issued a memorandum of decision concluding that the matter is not moot and will not be dismissed. The May 3 decision is incorporated by reference.

As required by the May 3 decision, written filings, oral argument, and deliberation then occurred concerning an initial question of law, which was whether, under 10 V.S.A. § 6001(9), the Board and District Commissions may determine that a site listed on the State Register is nonetheless not an historic site.

On June 14, 1995, the Board issued a memorandum of decision which is incorporated by reference. In the decision, the Board concluded that 10 V.S.A. § 6001(9) requires the Board and District Commissions to consider a site listed on the State Register to be an "historic site." The Board also set this matter for de

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novo hearing on whether the demolition of the Building constitutes an undue adverse effect. The Board further encouraged the parties to engage in settlement discussions.

On July 11, 1995, the Division and the Applicant each submitted letters stating that settlement discussions had been commenced.

On August 21, 1995, the Division filed a stipulation and joint motion to amend permit executed by both the Division and the Applicant.

The Board deliberated on September 27, 1995 and gave drafting instructions to staff. The Board deliberated again and approved a draft decision on November 1, 1995. This matter is now ready for decision.

## II. ISSUE

Whether, based on the stipulation and joint motion to amend the permit filed by the parties, the demolition of the Building constitutes an undue adverse effect on an historic site.

## III. FINDINGS OF FACT

The following findings of fact are based on the stipulation and joint motion to amend the permit filed by the parties on August 21, 1995:

1. On January 27, 1994, the Vermont Advisory Council on Historic Preservation placed the Manual Arts Building at Kurn Hattin Schools in Westminster, Vermont on the Vermont Register of Historic Places.
2. The Advisory Council placed the Manual Arts Building on the state register based on two of the sixteen criteria it uses to determine historic significance:
  - a. Criterion 1, "noteworthy examples of architectural styles, periods or methods of construction," and
  - b. Criterion 16, "a site which is associated with events that have made a significant contribution to the broad patterns of our history."
3. The Building bears an historic association with progressive education in Vermont as part of Kurn Hattin. It was the historic significance of Kurn

Hattin as an example of a progressive education program, and the fact that the Building was constructed by Kurn Hattin students and staff, that qualified the Manual Arts Building for listing under Criterion 16.

4. The Manual Arts Building is an historic site.
5. As authorized by Land Use Permit #2W0082-4, the Applicant demolished the Manual Arts Building on February 16, 1995 while this appeal was pending before the Environmental Board.
6. Demolition of the Manual Arts Building had an adverse effect on that historic site.
7. In the stipulation with the Division, the Applicant proposes to mitigate for the loss of the historic Manual Arts Building by implementing all of the following measures:
  - a. Creation of a permanent photographic and narrative display of historic Kurn Hattin structures, with particular emphasis on the Manual Arts Building. The display will include photographs of the Manual Arts Building during its construction and use, and recent photographs of the Building prior to its demolition. The exhibit will be on display in a prominent area inside the main entrance to the Mayo Memorial Center on the Kurn Hattin campus.
  - b. Development of an academic course that covers the history of Kurn Hattin and its significance in state and national education history. The course will discuss how buildings on the campus, including the Manual Arts Building, represent the evolution of the institution and its educational approach. It is anticipated that the course will be offered annually. In no event will the course be offered less than every other year.
  - c. Permanent placement of the original granite slab bearing the inscription "Manual Arts Building" at the site of the Manual Arts Building, with appropriate permanent markings indicating that the Manual Arts Building was located at that site from 1935 to 1995.
8. The Mayo Memorial Center is the new academic center at the Kurn Hattin campus. The Mayo Memorial Center also houses the auditorium and Performing Arts Center; as a result more people will have the opportunity

to view the exhibit described in Finding 7a, above, if it is placed in this building than at any other location on the campus.

9. The proposed mitigation measures will enhance the ability of the public to appreciate the historic significance of Kurn Hattin as an example of a progressive education program, the historic association of the Manual Arts Building with progressive education in Vermont as part of Kurn Hattin, and the historic and architectural significance of the Kurn Hattin campus and its structures.

#### IV. CONCLUSIONS OF LAW

As stated in our memorandum of decision in this matter dated June 14, 1995, the Board, on de novo appeal, must treat the Building as if it were still standing, notwithstanding the fact that the Applicant has demolished it.

Based on the foregoing findings of fact, the Board concludes that, with the proposed mitigating conditions, demolition of the Building constitutes an adverse effect on an historic site which is not undue. See 10 V.S.A. §§ 6001(9), 6086(a)(8).

In reaching this conclusion, the Board is persuaded by the following, each of which is essential to the conclusion: (a) the proposed mitigation measures will enhance the ability of the public to appreciate the historic significance of Kurn Hattin as set out in Finding 9, above; (b) the continued existence (implied in the findings) of the remainder of the historic Kurn Hattin campus; and (c) the Board's belief that the historic significance of the Building is not such that demolition is unacceptable.

Our conclusion herein in no way diminishes the Boards statutory authority to conclude that the adverse effect posed by the demolition of an historic site is undue.

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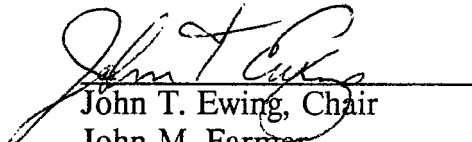
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V. ORDER

Land Use Permit #2W0082-4-EB is hereby issued. Jurisdiction over this matter is returned to the District #2 Commission.

Dated at Montpelier, Vermont this 2nd day of November, 1995.

ENVIRONMENTAL BOARD

  
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